

ORIGINAL

FILED

August 4 2009

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA **DA09-0437**

STATE OF MONTANA,

Plaintiff and Appellee,

v.

MELVIN MATSON,

Defendant and Appellant

FILED

AUG 04 2009

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

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**PETITION FOR OUT-OF-TIME APPEAL**

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The Office of the Appellate Public Defender requests that the Court permit an out-of-time appeal under Mont. R. App. P. 4(6), which provides:

In the infrequent harsh case and under extraordinary circumstances amounting to a gross miscarriage of justice, the supreme court may grant an out-of-time appeal. An out-of-time appeal must be requested by verified petition supported by affidavits, records, and other evidence establishing the existence of the extraordinary circumstances claimed. Extraordinary circumstances do not include mere mistake, inadvertence, or excusable neglect.

The basis for the request is as follows:

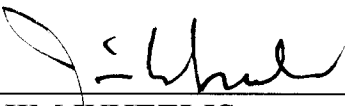
On June 9, 2009, Jon Moog, Regional Deputy Public Defender, transferred the above case to the Appellate Defender Office for representation on appeal. Mr. Matson is appealing the denial of his suppression hearing to which he has entered a

conditional plea. Mr. Moog transferred this file to the Appellate Defender Office per office policy. Attached please see Affidavit of Sarah J. Braden, Office Manager and Paralegal for the Appellate Defender Office.

Mark Mattioli, Assistant Attorney General, does not object to the filing of this petition for out-of-time appeal.

Respectfully submitted this 4<sup>th</sup> day of August, 2009.

OFFICE OF THE STATE PUBLIC DEFENDER  
Appellate Defender Office  
301 South Park, Room 568  
P.O. Box 200145  
Helena, MT 59620-0145

By:   
JIM WHEELIS  
Chief Appellate Defender

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and accurate copy of the foregoing  
Petition for Out-of-Time Appeal to be mailed to:

STEVE BULLOCK  
Montana Attorney General  
MARK MATTIOLI  
Assistant Attorney General  
215 North Sanders  
P.O. Box 201401  
Helena, MT 59620-1401

MATTHEW JOHNSON  
Jefferson County Attorney  
201 Centennial  
P.O. Box H  
Boulder, MT 59632

DATED: August 4, 2009

A handwritten signature in black ink, appearing to read "Matthew Johnson", is written over a horizontal line. The signature is stylized with a large, sweeping initial "M" and a long, trailing flourish.

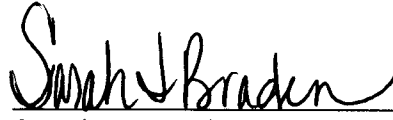
STATE OF MONTANA            )  
  :       ss  
Lewis and Clark County       )

Being duly sworn, I, Sarah Braden, hereby depose and state as follows:

1.     I am the Office Manager and Paralegal for the Appellate Defender Office.
2.     In my duties as Office Manager, I am responsible for drafting and filing the Notice of Appeals in all public defender cases throughout the State of Montana. It is my practice to log each case into a notice of appeal deadline spreadsheet and file notices 1 to 3 days prior to their actual due date. On August 3, 2009, I filed three appeals that were showing due dates of August 4, 2009. I also had Mr. Matson's case listed on my spreadsheet as having a due date of Saturday, August 2, 2009. When looking at the spreadsheet yesterday, I assumed that I filed Mr. Matson's notice of appeal since this was my general practice. When going back today and entering the dates in which I actually filed the appeals, I found that no notice had been filed.


3. I have contacted Mark Mattioli, Assistant Attorney General, and he has advised me that he does not object to the filing of the notice of appeal one day late.

DATED this 4<sup>th</sup> day of August, 2009.

  
\_\_\_\_\_  
Sarah J. Braden

SUBSCRIBED AND SWORN to before me this 4<sup>th</sup> day of  
August, 2009.

(NOTORIAL SEAL)

  
\_\_\_\_\_  
Notary Public for the State of Montana  
Christopher Romano  
\_\_\_\_\_  
Printed Name  
Residing at: Helena  
\_\_\_\_\_  
My Commission Expires: April 24, 2013